

latter requirement -- which represents our actual proposal -- TIA appears to concede that it would not impose any unreasonable burdens. See id.

A few commenters claim that our proposal would not serve its intended purpose because subscribers can make use of special features on a per-call basis, rather than solely by requesting more long-term changes in their service profiles. See BellSouth Comments at 14; USTA Comments at 6; SBC Comments at 14. But the availability of per-call features is simply irrelevant to our proposal. We have suggested only that law enforcement be alerted to the assignment or removal of features that can affect call content or call-identifying information from a customer's line, and have not sought to be notified of a subscriber's use of per-call features. As a practical matter, law enforcement will know in advance what per-call features a particular carrier makes available to its subscribers, and will have collected enough information to predict the subject's likely use of such features, before initiating an intercept, and will be able to order the appropriate number of call content and call data channels based on this information.

Some commenters seek to base objections on the development of Advanced Intelligent Network services. See BellSouth Comments at 14; USTA Comments at 6. Nothing that we have proposed has any bearing upon a carrier's ability to develop Advanced Intelligent Network systems, and none of our proposals is incompatible with these systems. If they were, we would welcome the suggestion of alternative means of curing this deficiency that would be compatible with these new systems. Once again, however, the commenters have declined either to challenge our fundamental observation that there are deficiencies in the interim standard, or to suggest alternatives to our proposed means of curing these deficiencies.

Some commenters again argue that the government's proposal seeks the delivery of information that has nothing to do with the origin or destination of a call, and thus is not call-identifying information. See BellSouth Comments at 13-14; PrimeCo Comments at 20-21; SBC Comments at 13. These commenters fail to recognize the statutory obligation to "ensure" that carriers' systems are capable of providing law enforcement with "all wire and electronic communications" essential to an authorized interception (47 U.S.C. § 1002(a)(1)). They do not attempt to, nor could they, undermine our observation that information regarding changes in a subscriber's service profile are absolutely essential to law enforcement's ability to conduct effective electronic surveillance.

One commenter refers to various complications that might arise when changes in features or services occur outside of a carrier's network, and thus are not reflected in the carrier's records. See PrimeCo Comments at 21. This is a red herring, for the government is not suggesting that any carrier report to law enforcement regarding service changes implemented outside of its network. See DOJ/FBI Petition, Appendix 1 (§ 64.1708(g)) (specifying "network-provided" features). Nor have we suggested that feature status reporting should include obscure and inconsequential features that could not affect law enforcement's ability to conduct effective surveillance. See *id.* (specifying "features that would affect the delivery to law enforcement of call content or call-identifying information"); *id.* at (g)(2) (enumerating specific categories of features).

Ignoring the fundamental changes in telecommunications services that led Congress to enact CALEA itself, a few commenters declare that law enforcement should be satisfied with making person-to-person requests for feature status information. See AT&T Comments at 13; CDT Comments at 20; CTIA Comments at 17; U S West Comments at 24. This method of obtaining this

information is infeasible in the current environment. Law enforcement officers in one city urgently needing feature status information can no longer simply identify the appropriate carrier employee in the carrier's local office, serve that person with a subpoena, and quickly obtain the necessary information. The employees who could have serviced such requests in the old environment do not exist today; they have been replaced by computerized switching systems that may be located in an entirely different city from the law enforcement officer needing the information. Given the current structure of telecommunications service, automated messaging clearly is the most practicable and convenient method of meeting this need, for law enforcement and for telecommunications carriers.

I. Standardization of delivery interfaces

As explained in the government's petition, the implementation of CALEA's assistance capability requirements could be jeopardized by the development of numerous incompatible interface protocols, for each of which law enforcement would have to develop individualized interface mechanisms in order to make use of surveillance information. The practical difficulties of managing interfaces with countless different protocols would cause law enforcement to be effectively denied access to information both legally authorized for collection and actually collected by carriers. To cure this deficiency, the government's petition and proposed rule seek a limit on the total number of interfaces used.³⁵ The petition emphasizes that the government is not trying to

³⁵ Contrary to the suggestion of AirTouch (see AirTouch Comments at 25), the position taken in the government's petition and proposed rule regarding limits on the number of interfaces is precisely the same position taken by the Department of Justice in its February 3, 1998, letter to industry. See DOJ/FBI Petition, Appendix 5, at 3 ("although a single delivery interface is not mandated by CALEA * * * [r]ecent productive discussions with industry have resulted in what DOJ believes is an acceptable compromise, whereby the industry would commit to a limited number of no more than five delivery interfaces") (emphases added). AT&T is incorrect when it claims that
(continued...)

prescribe particular interfaces to be included in the Commission's rule, that CALEA itself does not require the adoption of any particular interface, and that the government seeks only to ensure that law enforcement will not be presented with an unmanageable multiplicity of incompatible protocols. This proposal clearly does not contemplate any onerous restructuring or cutting back of existing protocols since, as TIA concedes, the number of protocols generally used by carriers is already quite limited. See TIA Comments at 74; cf. BellSouth Comments at 16 (alleging that the proposal would require widespread modification of existing equipment).

Only a few comments even attempt to cast doubt upon the reasonableness of this proposal. One commenter claims that the interim standard's rules governing the format of acceptable physical interfaces adequately meets law enforcement's concerns. See TIA Comments at 73. But the interim standard in no way limits the number of different physical interfaces law enforcement will have to manage, and thus does nothing to meet the concern underlying this proposal.

Two commenters make the irrelevant assertion that CALEA requires no specific interface, and that industry should be left the task of choosing particular interfaces. See TIA Comments at 72; SBC Comments at 14. As we have stressed, our proposal in no way suggests that law enforcement or the Commission mandate the adoption of any particular physical interfaces by any carrier.

Finally, TIA asks what is to be done when the evolution of telecommunications technology leads to the introduction of new interfaces. See TIA Comments at 74. We note that law enforcement

³⁵(...continued)

the government has subsequently characterized the request for a five-interface limit as "unnecessary and not required." AT&T Comments at 15-16. That claim rests on a misrepresentation of the government's statements to the ESS ad hoc group. See Letter from H. Michael Warren, Senior Project Manager/Chief, CALEA Implementation Section, FBI, to Peter Musgrove, Chair, TIA TR45.2 ESS Ad Hoc Group (June 1, 1998), p. 2 (attached).

did not invent the problem of multiple incompatible interfaces, and that it has always been an issue that the industry itself has had to deal with in designing its products, for example by creating industry standards and updating these standards periodically to reflect changes in the relevant technologies. Law enforcement has no objection to the same approach being taken in this context, through the mechanism made available in CALEA. Should the industry decide that a new interface is desirable, the Commission may readily provide for the use of that interface.

III. Other Assistance Capability Issues

A. Location Information

In its rulemaking petition, CDT has objected to provisions of the interim standard that require carriers, in certain circumstances, to provide law enforcement agencies with "location" information at the beginning and end of communications to and from mobile terminals. In its latest comments, CDT renews these objections. See CDT Comments at 29-34.

In our comments filed on May 20, we addressed this issue and explained why CDT's objections are unfounded. See DOJ/FBI Comments at 16-21. As we noted, the language in Section 103(a)(2) of CALEA concerning location information does not demonstrate that location information is not "call-identifying information"; to the contrary, it reflects precisely the opposite assumption. The language on which CDT relies is intended only to ensure that location information is not provided on the basis of a pen register order, and the provisions of the interim standard are fully consistent with that requirement. In practical terms, moreover, the interim standard does not require carriers to provide information that would permit law enforcement agencies to identify the specific physical location of an intercept subject. CDT's current comments require little further discussion; only two additional comments are in order.

First, contrary to CDT's suggestion (CDT Petition at 32-33), the government is not trying to turn Section 103(a)(2)'s express exception regarding location information in pen register cases into a "mandate" in non-pen register cases. Rather, we are simply saying that the exception is just that -- an exception -- and that outside the context of pen register cases, the general definition of "call-identifying information" applies. It is CDT that is trying to turn Section 103(a)(2)'s limited proviso regarding location information in pen register cases into an omnibus exclusion of location information from the scope of CALEA, an exclusion that would apply even when it is undisputed that law enforcement has the legal authority to acquire such information.

Second, CDT acknowledges that the draft definition of "call-identifying information" originally excluded location information altogether, but that this language was eventually removed from the statutory definition. CDT Comments at 31; see 140 Cong. Rec. S11056 (Aug. 9, 1994) (draft bill) (call-identifying information "does not include any information that may disclose the physical location of the subscriber * * * "). Far from being merely a cosmetic change, as CDT tries to suggest, this revision is devastating to CDT's position. If Congress had intended to exclude location information from the scope of call-identifying information altogether, as CDT contends, it would have left the location language in the definition of "call-identifying information" itself. The only reason to remove the language from the definition, and to substitute the limited proviso now found in Section 103(a)(2) was to ensure that location information would not be excluded from the scope of call-identifying information in non-pen register cases. The legislative history thus provides compelling evidence that CDT's reading of the statute is incorrect.

B. Packet switching

CDT also objects to provisions of the interim standard that require carriers transmitting communications using packet switching protocols to deliver the entire packet data stream associated with a given communication, including call content, except where information is not authorized to be acquired. CDT asserts that this aspect of the interim standard violates Section 103(a)(4)(A) of CALEA, which requires carriers to "protect[] * * * the privacy and security of communications and call-identifying information not authorized to be intercepted * * * ."

In our May 20 comments, we explained why the packet switching provisions of the interim standard are consistent with Section 103(a)(4)(A). See DOJ/FBI Comments at 21-22. The only additional point that needs to be made is that, to the extent that carriers may find it technically feasible to strip out call content from the packet data stream and deliver only call-identifying information in cases where the government does not have authority to intercept call content (cf. CDT Comments at 36-38), the government has no objection to the implementation of such solutions. In defending the interim standard, it emphatically is not the government's object to obtain access to call content in cases where its legal authority does not extend that far.

C. Covered Carriers

The assistance capability requirements of Section 103 of CALEA apply to "telecommunications carriers," a term that CALEA specifically defines. See 47 U.S.C. § 1001(8). AT&T devotes a relatively lengthy discussion to the issue of whether providers of Cellular Digital Packet Data ("CDPD") services come within the statutory definition of telecommunications carriers. See AT&T Comments at 17-22. This issue is wholly outside the scope of the April 20 Public Notice

governing the present comments, and we therefore reserve discussion on it for a more appropriate setting.

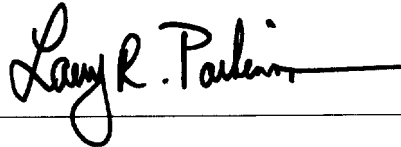
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This proceeding involves issues of great urgency and importance to the American people. As Congress recognized when it enacted CALEA, the ability of federal, state, and local law enforcement agencies to carry out legally authorized electronic surveillance is critical to the effective detection, prosecution, and prevention of criminal activity. What is at stake here is not mere "one-stop shopping" or "convenience" for law enforcement, as the commenters cavalierly suggest, but rather the public's interests in enforcing criminal laws and preserving personal safety -- interests of the highest possible magnitude. Congress has imposed specific assistance capability obligations on telecommunications carriers to further these interests, and Congress has entrusted the Commission with the responsibility to ensure that carriers fully satisfy those obligations. For the reasons given above and in the government's rulemaking petition, prompt action by the Commission is imperative if the assistance capability requirements of CALEA -- and the compelling public interests underlying them -- are to be vindicated.

DATE: June 12, 1998

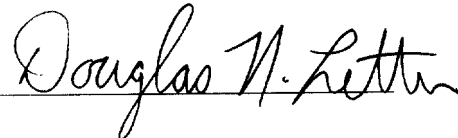
Respectfully submitted,

Louis J. Freeh, Director
Federal Bureau of Investigation

A handwritten signature in cursive script, reading "Larry R. Parkinson", written over a horizontal line.

Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Honorable Janet Reno
Attorney General of the United States

A handwritten signature in cursive script, reading "Stephen W. Preston", written over a horizontal line.

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Douglas N. Letter
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Before the
Federal Communications Commission
Washington, D.C. 20554

Certificate of Service

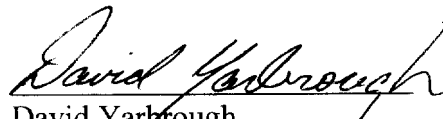
In the Matter of:)

Communications Assistance for Law)
Enforcement Act)
_____)

CC Docket No. 97-213

I, David Yarbrough, a Supervisory Special Agent in the office of the Federal Bureau of Investigation (FBI), Washington, D.C., hereby certify that, on June 12, 1998, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of the above-referenced Reply Comments Regarding Standards For Assistance Capability Requirements, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Washington, D.C. this 12th day of June, 1998.


David Yarbrough

In the Matter of:
Communications Assistance for Law Enforcement Act

Service List

*The Honorable William E. Kennard, Chairman
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***HAND DELIVERED**

Before the
FEDERAL COMMUNICATIONS COMMISSION

In the matter of:

CC Docket No. 97-213

Communications Assistance for Law
Enforcement Act

DECLARATION OF DETECTIVE JOHN ROSS

I, Detective John Ross, hereby declare as follows:

1. I am a Detective in the New York City Police Department, assigned to the Technical Assistance Response Unit, and was so employed in January - February 1996. My involvement with kidnapping case number 1/96 was as lead technical investigator. The function of the Technical Assistance Response Unit (TARU) during kidnap investigations consists of, but is not limited to, providing call trace information via various Communications Carriers, implementing Court Ordered and consensual eavesdropping, and video / audio surveillance.

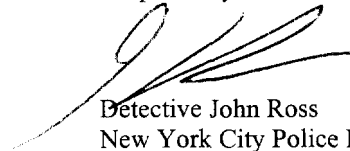
2. On January 27, 1998 the Technical Assistance Response Unit received information from members of the New York City Police Department's Major Case Squad that a 35 year old female, last seen on January 25, 1996 at 11:30PM was the victim of a kidnapping. The victim's family located in the Fukian Province of China received a telephone call from the kidnappers, who put the screaming victim on the line, and requested a \$ 38,880.00 ransom for the return of the victim.

3. As part of the investigative steps to locate both the victim and the kidnappers two telephones were consensually wiretapped with a trap & trace implemented and two telephone lines had Court Ordered trap & trace implemented. During the course of the investigation numerous calls were made by the kidnappers to the victim's family and to each other both domestic and international. The most important calls, those with the victim on the line, took up to ten days to trace through various communications carriers in order to determine the number from which the calls originated. The call trace information received led directly to the recovery of the victim alive, although severely injured and traumatized. During the time the victim was held by the kidnappers she was raped, sodomized and abused by at least two of the kidnappers daily.

4. It has been my experience, in many investigations, kidnappings, homicide and narcotic related cases that the targets of these investigations are increasingly switching to the digital "PCS" technology in order to hamper the ability of law enforcement to intercept their communications. This is true in the case of at least one carrier which can not provide the dialed digits of the target PCS telephone in real time but can provide the audio. The dialed digit information is faxed to the investigating agency by the carrier two days after the call took place. This obviously puts the investigator at a major disadvantage in identifying the called and calling parties, which in the best case hampers the investigation and in the worst case, e.g. kidnapping, can cause excessive delays in the recovery of the victim.

5. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 10, 1998.

Respectfully submitted,



Detective John Ross
New York City Police Department (TARU)
Fort Totten - Bldg. 610
Bayside, New York 11359



U.S. Department of Justice

Federal Bureau of Investigation

*CALEA Implementation Section
14800 Conference Center Drive, Suite 300
Chantilly, VA 20151*

June 1, 1998

Ms. Cheryl Blum
Chair, TIA Subcommittee TR45.2
Lucent Technologies
1000 E. Warrenville Road
Naperville, Illinois 60566

Dear Ms. Blum:

Recently there has been some confusion regarding procedures employed at the ad hoc group dealing with Enhanced Surveillance Services (ESS). This may have led to possible inefficiencies and misunderstandings in the group. I think you may be able to offer some clarification in this regard. I would appreciate your assistance in correcting some mis-perceptions concerning documents contributed by the Federal Bureau of Investigation (FBI) CALEA Implementation Section (CIS) to the ESS Ad Hoc Group in Tucson, Arizona, and in Key West, Florida. I wonder if you would explain the procedures used in the engineering committee regarding submission of contributions.

At the Tucson meeting, representatives of CIS submitted Appendix 1 of the Department of Justice (DOJ) and FBI's Federal Communications Commission (FCC) Petition to the ESS Ad Hoc Group for consideration. However, the group indicated that such detailed information belonged in stages two and three of PN-4177, which they were not ready to address yet. Bowing to the wishes of the group, the contribution was disposed of as "for information only." Because this document was provided at the request of the group on such short notice, it did not have the cover sheet that we normally provide. However, since that date the ad hoc group has not acknowledged that the contribution was submitted by CIS. I'm sure that you recall both yourself and my representatives to the ad hoc group had asked Mr. Peter Musgrove, the ESS Ad Hoc Group chair, at the outset to document the proceedings of that group. We would appreciate confirmation that this matter has been documented accurately. I have enclosed the following copies of all law enforcement contributions to

Ms. Cheryl Blum

the ESS Ad Hoc Group to help you complete your records:

TR45.2.ESS/98.03.10.03	Law Enforcement Identified Capabilities
TR45.2.ESS/98.03.10.04	Law Enforcement Identified Capabilities-Additional Recommendations
TR45.2.ESS/98.03.10.05	Law Enforcement Editorial Recommendations
TR45.2.ESS/98.04.14.03	PN-4177 Recommended Baseline Document
TR45.2.ESS/98.04.14.07	FBI Petition to the FCC: Appendix 1 "Proposed Final Rule"
TR45.2.ESS/98.05.04.02	Law Enforcement Stage 1 Recommendations
TR45.2.ESS/98.05.04.08	PN-4177 Working Document
TR45.2.ESS/98.05.04.11	Letter from Mr. H. Michael Warren to Mr. Peter Musgrove

At the Tucson and Key West meetings, several members of industry had requested confirmation that participants in the meetings could recommend changes to PN-4177 through verbal comments during the meetings. Mr. Musgrove had stated that until the document was voted as baseline text, any verbal inputs could be used to amend the working document. However, contrary to that position, the group has stated that only written statements from law enforcement would be acceptable. In addition, although several detailed technical contributions have been submitted by law enforcement and not fully addressed, the group contends that law enforcement has not provided comprehensive contributions. At the same time, the group is requesting that law enforcement consent to allow the ad hoc group to write the technical specifications for law enforcement. Such contradictory actions appear confusing at the least and leave significant questions on the part of law enforcement.

Furthermore, the ad hoc group spent considerable time at the last meeting drafting a letter to me. This obviously caused valuable time and resources to be removed from crafting PN-4177 itself. The intent of that letter was to get law enforcement to vote on a contribution to the standard prior to that text being adequately addressed and supported by the group. Such a request appears to be a deviation from the usual standards process and denies the industry and law enforcement the opportunity to understand and respond to the implications of the choice of words used to state the specification. The lack of endorsement by members of the group to the statements attached to that letter may indicate a lack of full understanding and agreement on the technical details. It would be appreciated if you could clarify what procedures are to be used in the ESS Ad Hoc Group to produce a standard.

We are also concerned about statements by individuals in the group that law enforcement is somehow delaying the standards process. The fact that the group used much of the last meeting editing a letter rather than putting specifications into PN-4177 raises questions about the work plan for the group and the focus on technical specifications. Any comments or suggestions from any part of the telecommunications industry or your participating members may be directed to CIS outside the meeting. This

Ms. Cheryl Blum

would help maintain focus in the ad hoc itself and may facilitate efficient progress toward the standard. CIS remains committed to addressing any concerns brought to its attention and will continue to contribute in good faith to the standards process in the normal fashion.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Michael Warren", with a long horizontal flourish extending to the right.

H. Michael Warren
Senior Project Manager/Chief

Enclosures (7)



U.S. Department of Justice

Federal Bureau of Investigation

*CALEA Implementation Section
14800 Conference Center Drive, Suite 300
Chantilly, VA 20151*

June 1, 1998

Mr. Peter Musgrove
Chair, TIA TR45.2 ESS Ad Hoc Group
AT&T Wireless Services
5000 Carillon Point
Kirkland, WA 98033

Dear Mr. Musgrove:

As you know, it is in the best interest of the telecommunications industry and law enforcement to move toward a technical standard which addresses all issues related to CALEA as quickly as possible. As chair of the Enhanced Surveillance Services (ESS) Ad Hoc Group, it is incumbent upon you to ensure the timely delivery of a proposed standard for the Subcommittee TR45.2 to ballot. Certain recent actions of the ad hoc group leave me with questions about the process being used by the ad hoc group. While industry representatives to the ad hoc group point to law enforcement as having a slowing effect on the work, I note that much of the most recent meeting was used to draft a letter you signed, which contains factual errors and misrepresents my participation in the Tucson ESS meeting. I would like to take this opportunity to address certain of these issues.

At the outset of this ESS process, you committed to keeping an accurate record of the process and the details of moving toward the ESS standard. May I provide the following details that will assist in clarifying that record:

- Law enforcement representatives have clearly and repeatedly set forth the position that the nine punch list requirements are considered part of CALEA. We continue to participate in this industry standards effort while the FCC works on the proposed rule for CALEA capability.
- In my May 5, 1998 letter to you, I stated that law enforcement continues to support the nine punch list requirements as stated in our petition to the FCC. That petition contains a proposed rule that together with J-STD-025 provides all the information needed to develop a standard.

Mr. Peter Musgrove

- At the March 10, 1998 meeting in Austin, Texas, the ESS Ad Hoc Group chose not to address the detailed requirements provided in contribution 3 from FBI-CIS.
- At the April 14, 1998 meeting in Tucson, Arizona, the ESS Ad Hoc Group chose not to address the Appendix 1 from our FCC petition that FBI-CIS submitted as contribution 7.
- At the April, 14, 1998 meeting in Tucson, several representatives from the industry provided their opinions on the five standardized interfaces. In that meeting I was clear that I did not agree with those voiced opinions. However, you state in your letter that it was impossible to limit the number of interfaces. Your characterization that an agreement was made at the Tucson meeting is incorrect and should be retracted.
- Contributions to the ESS standards process clearly show that law enforcement has contributed significant input for the ad hoc group (30-40 organizations present at each of the meetings):

Organization	Number of Contributions	Cumulative Pages Contributed
CTIA	1 document	1 page
Synacom Technology	5 documents	30 pages
Nortel	2 documents	10 pages
Siemens	3 documents	15 pages
Lucent Technologies	2 documents	7 pages
SBC Technology Resources	1 document	1 page
Perkins Coie	1 document	3 pages
FBI-CIS	8 documents	83 pages

- You have stated in several meetings that verbal comments to PN-4177 would be accepted, yet the group has stated that it would not accept verbal comments from law enforcement representatives.
- You have stated that the group can submit Stage 2 and Stage 3 contributions in parallel with Stage 1 contributions, but to date none of the Stage 2 or Stage 3 text proposed by law enforcement has been addressed.

Mr. Peter Musgrove

The ESS Ad Hoc Group spent much of the last meeting helping to draft the letter you sent to me and the attachment to that letter. This was time during which no substance was added to the PN-4177 working document. This shift of focus away from technical and engineering discussions is unlikely to assist in expeditious movement toward a standard. The apparent intent of that letter was to get law enforcement to vote on a contribution to the standard prior to that text being adequately addressed and supported by the group. Such a request appears to be a deviation from the usual standards process and denies the industry and law enforcement the opportunity to understand and respond to the implications of the choice of words used to state each specification. The lack of endorsement by members of the ESS Ad Hoc Group to the statements attached to that letter may indicate a lack of full understanding and agreement on the technical details.

It would assist us a great deal if you would clarify the following within the ad hoc group:

- Correct the record to identify FBI-CIS as the author of contribution 7 at the Tucson meeting.
- Clarify whether written contributions are the sole basis for changes to PN-4177.
- Clarify whether it is necessary for FBI-CIS to vote on the contents of PN-4177 prior to freezing of the standard.

As you can see by the above, law enforcement continues to make good faith efforts to participate in the process according to industry rules. Any comments or suggestions from any part of the telecommunications industry or your participating members may be directed to CIS outside the meeting. This would help maintain focus in the ad hoc itself and may facilitate efficient progress toward the standard. CIS remains committed to addressing any concerns brought to its attention and will continue to contribute in good faith to the standards process in the normal fashion.

Sincerely,



H. Michael Warren
Senior Project Manager/Chief

cc: Cheryl Blum, TR45.2, Chair
Wayne Zeuch, T1S1 Chair
Asok Chatterjee, T1P1 Chair
John McDonough, T1M1 Chair